(ii) students not receiving education certificates under this Act.

SEC. 12. REPORTS.

(a) REPORT BY GRANT RECIPIENT.—Each eligible entity receiving a grant under this Act shall submit to the evaluating agency entering into the contract under section 11(a)(1) an annual report regarding the demonstration project under this Act. Each such report shall be submitted at such time, in such manner, and accompanied by such information, as such evaluating agency may require.

(b) REPORTS BY COMPTROLLER GENERAL.—

(1) ANNUAL REPORTS.—The Comptroller General of the United States shall report annually to the Congress on the findings of the annual evaluation under section 11(a)(2) of each demonstration project under this Act. Each such report shall contain a copy of—

(A) the annual evaluation under section 11(a)(2) of each demonstration project under this Act; and

(B) each report received under subsection (a) for the applicable year.

(2) FINAL REPORT.—The Comptroller General shall submit a final report to the Congress within 9 months after the conclusion of the demonstration program under this Act that summarizes the findings of the annual evaluations conducted pursuant to section 11(a)(2).

Mr. LIEBERMAN. Mr. President, I am very pleased to join Senator COATS today to introduce the Low-Income School Choice Demonstration Act. I know Senator COATS shares my deep commitment to improving education. All of our children deserve and need the best possible academic instruction. Increasing school choice will help give more children the opportunity they deserve.

Our bill authorizes up to 20 demonstration projects to determine the effects on students and schools of providing education vouchers to low-income parents for their children. Parents would use the vouchers to choose the public or private school their child would attend. The demonstration programs will give participating children new opportunities, and will provide those participating children new opportunities, and will provide those of us seeking to strengthen education with a fair evaluation of private school choice programs.

Education in America is in need of change. We are failing too many of our children. The performance of our kids lags behind that of children living in those countries we compete with in the global marketplace. While we have many fine schools, we have too many that do not give our children what they need to succeed.

I have visited many excellent public schools in Connecticut, and have met countless dedicated and effective teachers and administrators. I command them for their work and am committed to supporting their efforts. At the same time, it is clear that the public schools are not working for all students, particularly in our poorest communities. We have a responsibility to seek more effective ways to address the needs of these children.

School choice programs expand opportunity for low-income children. They provide low-income children with the same options other kids have. For some that may mean another public school, for others a private or parochial school.

Private school choice opens doors for children in our poorest neighborhoods, where religious schools—particularly Catholic schools—often have had better results than public schools. I have long believed what some research has shown—that the success of parochial schools is in part due to their students' and teachers' shared beliefs and strong moral values. Lower-income parents who want their kids to learn in a religious environment should have that chance, just as wealthier parents do.

Some fear that school choice programs will hurt our public schools, but I think choice will help revitalize public education. A national panel of experts, the Panel on the Economics of Educational Reform, recently concluded that public schools have few incentives for innovation. Good, effective teachers are often not rewarded by greater pay. Programs are rarely evaluated systematically to see if they are working.

Choice programs and charter school programs hold schools accountable for results. Voucher programs let parents and students reward good schools—public or private schools—with their business. That increased competition may help those students who stay put as well as those who choose to attend a new school.

As a U.S. Senator I have worked to promote public and private school choice. Last year Congress passed legislation, which I had co-authored, to promote the establishment of charter schools—public schools that are freed from burdensome regulatory requirements and are instead held accountable for improving the performance of their students. I am pleased that Congress made a commitment to public school choice, and will work to ensure the new program the rapidly growing interest in charter schools.

This year Senator COATS and I are introducing legislation that establishes demonstration programs that provide parents with the ability to choose private or public schools, including public charter schools and private parochial schools. The demonstrations will allow low-income children to attend the public or private school of their choice. The bill will also fund evaluations so that we can learn more about how voucher programs affect public and private schools, and how they affect our children's ability to learn.

Improving public education is and must be our country's top priority. What we are trying to do is find new ways to accomplish that goal. School choice programs should be tested. They create competition for failing bureaucracies and failing schools. They reward public and private schools that work. And, most important, they give our poorest students the chance for a better education and a better life.

Mr. President, I thank Senator COATS for his leadership on this bill, and I look forward to continuing to work with him to ensure our children have the education and opportunity they deserve.

By Mr. SMITH (for himself, Mr. LAUTENBERG, Mr. FAIRCLOTH, Mr. MCCONNELL, Mr. SIMON, Mr. MACK, Mr. BOND, Mr. GRAHAM, Mr. LIEBERMAN, Mr. WARNER and Mr. REID):

S. 619. A bill to phase out the use of mercury in batteries and provide for the efficient and cost-effective collection and recycling or proper disposal of used nickel cadmium batteries, small sealed lead-acid batteries, and certain other batteries, and for other purposes; to the Committee on Environment and Public Works.

THE MERCURY-CONTAINING AND RECHARGEABLE BATTERY MANAGEMENT ACT

MR. SMITH. Mr. President, today I am introducing the Mercury-Containing and Rechargeable Battery Management Act. I am pleased to be joined by Senators LAUTENBERG, FAIRCLOTH, MCCONNELL, LIEBERMAN, SIMON, MACK, BOND, GRAHAM, WARNER and REID. This legislation is urgently needed to remove Federal barriers detrimental to much-needed State and local recycling programs for batteries commonly found in cordless products such as portable telephones, laptop computers, tools, and toys.

Since 1992, Federal battery legislation has been approved in various congressional forums, including passage by the Senate in 1994, but it did not become law because the legislation to which it was attached did not move forward. Our bill, which is virtually identical to the Senate passed provisions last year, would—

First, facilitate the efficient and cost effective collection and recycling or proper disposal of used nickel cadmium [Ni-Cd] and certain other batteries by: establishing a coherent national system of labeling for batteries and products; streamlining the regulatory requirements for battery collection programs for regulated batteries; and encouraging voluntary industry programs by eliminating barriers to funding the collection and recycling or proper disposal of used rechargeable batteries; and

Second, phase out the use of mercury in batteries.

Without this legislation, States and industry face Federal barriers to implementing State battery recycling programs across the country. Thirteen States, including New Hampshire, have enacted legislation requiring that Ni-Cd and small sealed lead-acid batteries be labeled and are easily removable from consumer products. Of these 13 States, 9 have enacted legislation calling for the collection of Ni-Cd and small-sealed lead-acid batteries.

Mr. President, although industry has developed a national collection program to comply with these laws, without enactment of a Federal bill, EPA's current regulatory requirements preclude industry from fully implementing this program and from complying with the State collection requirements. Regulatory changes currently under consideration, even if promulgated, will not provide the necessary solution. Additional lengthy rulemaking procedures would also be necessary to make the regulation operational on a national basis. Further, we would still lack a coherent national system of labeling, which is necessary to facilitate nationwide marketing of batteries and products while advancing a national battery collection program. Federal legislation is the only real solution to removing the barriers to complying with State battery recycling laws, and to achieving a comprehensive recycling program.

The prompt passage of this legislation will achieve a number of important goals. First, by establishing uniform national standards to promote the recycling and reuse of rechargeable batteries, this legislation provides a cost effective means to promote the reuse of our Nation's resources. Second, our bill will further strengthen efforts to remove these potentially toxic heavy metals from our Nation's landfills and incinerators. Not only will this lower the threat of groundwater contamination and toxic air emissions, but it will also significantly reduce the threat that these materials pose to the environment. Third, this legislation represents an environmentally friendly policy choice that was developed as the result of a strong cooperative effort between the States, environmental groups and the affected industries. Our bill is strongly supported by the Electronic Industries Association [EIA], the Portable Rechargeable Battery Association [PRBA], and the National Electrical Manufacturers Association [NEMA]. For all of the reasons cited above, I believe that this legislation provides a substantial win-win from both an environmental as well as an economic standpoint.

Mr. President, I urge my colleagues to cosponsor this important legislation, and ask unanimous consent that a copy of the bill, a section-by-section outline of the bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 619

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION. 1. SHORT TITLE.

This Act may be cited as the ''Mercury-Containing and Rechargeable Battery Management Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) it is in the public interest to—

(A) phase out the use of mercury in batteries and provide for the efficient and cost-effective collection and recycling or proper disposal of used nickel cadmium batteries, small sealed lead-acid batteries, and other regulated batteries; and

(B) educate the public concerning the collection, recycling, and proper disposal of such batteries;

(2) uniform national labeling requirements for regulated batteries, rechargeable consumer products, and product packaging will significantly benefit programs for regulated battery collection and recycling or proper disposal; and

(3) it is in the public interest to encourage persons who use rechargeable batteries to participate in collection for recycling of used nickel-cadmium, small sealed lead-acid, and other regulated batteries.

SEC. 3. DEFINITIONS.

In this Act:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) BUTTON CELL.—The term ''button cell'' means a button- or coin-shaped battery.

(3) EASILY REMOVABLE.—The term ''easily removable'', with respect to a battery, means detachable or removable at the end of the life of the battery—

(A) from a consumer product by a consumer with the use of common household tools; or

(B) by a retailer of replacements for a battery used as the principal electrical power source for a vehicle.

(4) MERCURIC-OXIDE BATTERY.—The term ''mercuric-oxide battery'' means a battery that uses a mercuric-oxide electrode.

(5) RECHARGEABLE BATTERY.—The term ''rechargeable battery''—

(A) means 1 or more voltaic or galvanic cells, electrically connected to produce electric energy, that is designed to be recharged for repeated uses; and

(B) includes any type of enclosed device or sealed container consisting of 1 or more such cells, including what is commonly called a battery pack (and in the case of a battery pack, for the purposes of the requirements of easy removability and labeling under section 103, means the battery pack as a whole rather than each component individually); but

(C) does not include—

(i) a lead-acid battery used to start an internal combustion engine or as the principal electrical power source for a vehicle, such as an automobile, a truck, construction equipment, a motorcycle, a garden tractor, a golf cart, a wheelchair, or a boat;

(ii) a lead-acid battery used for load leveling or for storage of electricity generated by an alternative energy source, such as a solar cell or wind-driven generator;

(iii) a battery used as a backup power source for memory or program instruction storage, timekeeping, or any similar purpose that requires uninterrupted electrical power in order to function if the primary energy supply fails or fluctuates momentarily; or

(iv) a rechargeable alkaline battery.

(6) RECHARGEABLE CONSUMER PRODUCT.—The term ''rechargeable consumer product''—

(A) means a product that, when sold at retail, includes a regulated battery as a primary energy supply, and that is primarily intended for personal or household use; but

(B) does not include a product that only uses a battery solely as a source of backup power for memory or program instruction storage, timekeeping, or any similar purpose that requires uninterrupted electrical power in order to function if the primary energy supply fails or fluctuates momentarily.

(7) REGULATED BATTERY.—The term ''regulated battery'' means a rechargeable battery that—

(A) contains a cadmium or a lead electrode or any combination of cadmium and lead electrodes; or

(B) contains other electrode chemistries and is the subject of a determination by the Administrator under section 103(d).

(8) REMANUFACTURED PRODUCT.—The term ''remanufactured product'' means a rechargeable consumer product that has been altered by the replacement of parts, repackaged, or repaired after initial sale by the original manufacturer.

SEC. 4. INFORMATION DISSEMINATION.

The Administrator shall, in consultation with representatives of rechargeable battery manufacturers, rechargeable consumer product manufacturers, and retailers, establish a program to provide information to the public concerning the proper handling and disposal of used regulated batteries and rechargeable consumer products with nonremovable batteries.

SEC. 5. ENFORCEMENT.

(a) CIVIL PENALTY.—When on the basis of any information the Administrator determines that a person has violated or is in violation of any requirement of this Act, the Administrator—

(1) in the case of a willful violation, may issue an order assessing a civil penalty of not more than $10,000 for each violation and requiring compliance immediately or within a reasonable specified time period, or both; or

(2) in the case of any violation, may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

(b) CONTENTS OF ORDER.—An order under subsection (a)(1) shall state with reasonable specificity the nature of the violation.

(c) CONSIDERATIONS.—In assessing a civil penalty under subsection (a)(1), the Administrator shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(d) FINALITY OF ORDER; REQUEST FOR HEARING.—An order under subsection (a)(1) shall become final unless, not later than 30 days after the order is served, a person named in the order requests a hearing on the record.

(e) HEARING.—On receiving a request under subsection (d), the Administrator shall promptly conduct a hearing on the record.

(f) SUBPOENA POWER.—In connection with any hearing on the record under this section, the Administrator may issue subpoenas for the attendance and testimony of witnesses and for the production of relevant papers, books, and documents.

(g) CONTINUED VIOLATION AFTER EXPIRATION OF PERIOD FOR COMPLIANCE.—If a violator fails to take corrective action within the time specified in an order under subsection (a)(1), the Administrator may assess a civil penalty of not more than $10,000 for the continued noncompliance with the order.

SEC. 6. INFORMATION GATHERING AND ACCESS.

(a) RECORDS AND REPORTS.—A person who is required to carry out the objectives of this Act, including—

(1) a regulated battery manufacturer;

(2) a rechargeable consumer product manufacturer;

(3) a mercury-containing battery manufacturer; and

(4) an authorized agent of a person described in subparagraph (A), (B), or (C),

shall establish and maintain such records and report such information as the Administrator may by regulation reasonably require to carry out the objectives of this Act.

(b) ACCESS AND COPYING.—The Administrator or the Administrator's authorized representative, on presentation of credentials of

the Administrator, may at reasonable times have access to and copy any records required to be maintained under subsection (a).

(c) CONFIDENTIALITY.—The Administrator shall maintain the confidentiality of documents and records that contain proprietary information.

SEC. 7. STATE AUTHORITY.

Except as provided in sections 103(e) and 104, nothing in this Act shall be construed to prohibit a State from enacting and enforcing a standard or requirement that is more stringent than a standard or requirement established or promulgated under this Act.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

TITLE I—RECHARGEABLE BATTERY RECYCLING ACT

SEC. 101. SHORT TITLE.

This title may be cited as the ''Rechargeable Battery Recycling Act''.

SEC. 102. PURPOSE.

The purpose of this title is to facilitate the efficient recycling or proper disposal of used nickel-cadmium rechargeable batteries, used small sealed lead-acid rechargeable batteries, other regulated batteries, and such rechargeable batteries in used consumer products, by—

(1) providing for uniform labeling requirements and streamlined regulatory requirements for regulated battery collection programs; and

(2) encouraging voluntary industry programs by eliminating barriers to funding the collection and recycling or proper disposal of used rechargeable batteries.

SEC. 103. RECHARGEABLE CONSUMER PRODUCTS AND LABELING.

(a) PROHIBITION.—

(1) IN GENERAL.—No person shall sell for use in the United States a regulated battery that is ready for retail sale or a rechargeable consumer product that is ready for retail sale, which was manufactured on or after the date that is 12 months after the date of enactment of this Act, unless—

(A) in the case of a regulated battery, the regulated battery—

(i) is easily removable from the rechargeable consumer product; or

(ii) is sold separately; and

(B) in the case of a regulated battery or rechargeable consumer product, the labeling requirements of subsection (b) are met.

(2) APPLICATION.—Paragraph (1) does not apply to a sale of—

(A) a remanufactured product unit unless paragraph (1) applied to the sale of the unit when originally manufactured; or

(B) a product unit intended for export purposes only.

(b) LABELING.—Each regulated battery or rechargeable consumer product without an easily removable battery manufactured on or after the date that is 1 year after the date of enactment of this Act, whether produced domestically or imported, shall be labeled with—

(1)(A) 3 chasing arrows or a comparable recycling symbol;

(B)(i) on each nickel-cadmium battery, the chemical name or the abbreviation ''Ni-Cd''; and

(ii) on each lead-acid battery, ''Pb'' or the words ''LEAD'', ''RETURN'', and ''RECYCLE'';

(C) on each nickel-cadmium regulated battery, the phrase ''BATTERY MUST BE RECYCLED OR DISPOSED OF PROPERLY.''; and

(D) on each sealed lead acid regulated battery, the phrase ''BATTERY MUST BE RECYCLED.'';

(2) on each rechargeable consumer product containing a regulated battery that is not easily removable, the phrase ''CONTAINS NICKEL-CADMIUM BATTERY. BATTERY MUST BE RECYCLED OR DISPOSED OF PROPERLY.'' or ''CONTAINS SEALED LEAD BATTERY. BATTERY MUST BE RECYCLED.'', as applicable; and

(3) on the packaging of each rechargeable consumer product, and the packaging of each regulated battery sold separately from such a product, unless the required label is clearly visible through the packaging, the phrase ''CONTAINS NICKEL-CADMIUM BATTERY. BATTERY MUST BE RECYCLED OR DISPOSED OF PROPERLY.'' or ''CONTAINS SEALED LEAD BATTERY. BATTERY MUST BE RECYCLED.'', as applicable.

(c) EXISTING OR ALTERNATIVE LABELING.—

(1) INITIAL PERIOD.—For a period of 2 years after the date of enactment of this Act, regulated batteries, rechargeable consumer products containing regulated batteries, and rechargeable consumer product packages that are labeled in substantial compliance with subsection (b) shall be deemed to comply with the labeling requirements of subsection (b).

(2) CERTIFICATION.—

(A) IN GENERAL.—On application by persons subject to the labeling requirements of subsection (b) or the labeling requirements promulgated by the Administrator under subsection (d), the Administrator shall certify that a different label meets the requirements of subsection (b) or (d), respectively, if the different label—

(i) conveys the same information as the label required under subsection (b) or (d), respectively; or

(ii) conforms with a recognized international standard that is consistent with the overall purposes of this title.

(B) CONSTRUCTIVE CERTIFICATION.—Failure of the Administrator to object to an application under subparagraph (A) on the ground that a different label does not meet either of the conditions described in subparagraph (A)(i) or (ii) within 120 days after the date on which the application is made shall constitute certification for the purposes of this Act.

(d) RULEMAKING AUTHORITY OF THE ADMINISTRATOR.—

(1) IN GENERAL.—If the Administrator determines that other rechargeable batteries having electrode chemistries different from regulated batteries are toxic and may cause substantial harm to human health and the environment if discarded into the solid waste stream for land disposal or incineration, the Administrator may, with the advice and counsel of State regulatory authorities and manufacturers of rechargeable batteries and rechargeable consumer products, and after public comment—

(A) promulgate labeling requirements for the batteries with different electrode chemistries, rechargeable consumer products containing such batteries that are not easily removable batteries, and packaging for the batteries and products; and

(B) promulgate requirements for easy removability of regulated batteries from rechargeable consumer products designed to contain such batteries.

(2) SUBSTANTIAL SIMILARITY.—The regulations promulgated under paragraph (1) shall be substantially similar to the requirements set forth in subsections (a) and (b).

(e) UNIFORMITY.—After the effective dates of a requirement set forth in subsection (a), (b), or (c) or a regulation promulgated by the Administrator under subsection (d), no Federal agency, State, or political subdivision of a State may enforce any easy removability or environmental labeling requirement for a rechargeable battery or rechargeable consumer product that is not identical to the requirement or regulation.

(f) EXEMPTIONS.—

(1) IN GENERAL.—With respect to any rechargeable consumer product, any person may submit an application to the Administrator for an exemption from the requirements of subsection (a) in accordance with the procedures under paragraph (2). The application shall include the following information:

(A) A statement of the specific basis for the request for the exemption.

(B) The name, business address, and telephone number of the applicant.

(2) GRANTING OF EXEMPTION.—Not later than 60 days after receipt of an application under paragraph (1), the Administrator shall approve or deny the application. On approval of the application the Administrator shall grant an exemption to the applicant. The exemption shall be issued for a period of time that the Administrator determines to be appropriate, except that the period shall not exceed 2 years. The Administrator shall grant an exemption on the basis of evidence supplied to the Administrator that the manufacturer has been unable to commence manufacturing the rechargeable consumer product in compliance with the requirements of this section and with an equivalent level of product performance without the product—

(A) posing a threat to human health, safety, or the environment; or

(B) violating requirements for approvals from governmental agencies or widely recognized private standard-setting organizations (including Underwriters Laboratories).

(3) RENEWAL OF EXEMPTION.—A person granted an exemption under paragraph (2) may apply for a renewal of the exemption in accordance with the requirements and procedures described in paragraphs (1) and (2). The Administrator may grant a renewal of such an exemption for a period of not more than 2 years after the date of the granting of the renewal.

SEC. 104. REQUIREMENTS.

For the purposes of carrying out the collection, storage, transportation, and recycling or proper disposal of used rechargeable batteries, batteries described in section 3(3)(C) or in title II, and used rechargeable consumer products containing rechargeable batteries that are not easily removable rechargeable batteries, persons involved in collecting, storing, or transporting such batteries or products to a facility for recycling or proper disposal shall, notwithstanding any other law, be regulated in the same manner and with the same limitations as if the persons were collecting, storing, or transporting batteries subject to subpart G of part 266 of title 40, Code of Federal Regulations, as in effect on January 1, 1993, except that sections 264.76, 265.76, and 268.7 of that title shall not apply.

SEC. 105. COOPERATIVE EFFORTS.

Notwithstanding any other law, if 2 or more persons who participate in projects or programs to collect and properly manage used rechargeable batteries or products powered by rechargeable batteries advise the Administrator of their intent, the persons may agree to develop jointly, or to share in the costs of participating in, such a project or program and to examine and rely on such cost information as is collected during the project or program.

TITLE II—MERCURY-CONTAINING BATTERY MANAGEMENT ACT

SEC. 201. SHORT TITLE.

This title may be cited as the ''Mercury-Containing Battery Management Act''.

SEC. 202. PURPOSE.

The purpose of this title is to phase out the use of batteries containing mercury.

SEC. 203. LIMITATIONS ON THE SALE OF ALKALINE-MANGANESE BATTERIES CONTAINING MERCURY.

No person shall sell, offer for sale, or offer for promotional purposes any alkaline-manganese battery manufactured on or after January 1, 1996, with a mercury content that was intentionally introduced (as distinguished from mercury that may be incidentally present in other materials), except that the limitation on mercury content in alkaline-manganese button cells shall be 25 milligrams of mercury per button cell.

SEC. 204. LIMITATIONS ON THE SALE OF ZINC-CARBON BATTERIES CONTAINING MERCURY.

No person shall sell, offer for sale, or offer for promotional purposes any zinc-carbon battery manufactured on or after January 1, 1996, that contains mercury that was intentionally introduced as described in section 203.

SEC. 205. LIMITATIONS ON THE SALE OF BUTTON CELL MERCURIC-OXIDE BATTERIES.

No person shall sell, offer for sale, or offer for promotional purposes any button cell mercuric-oxide battery for use in the United States on or after January 1, 1996.

SEC. 206. LIMITATIONS ON THE SALE OF OTHER MERCURIC-OXIDE BATTERIES.

(a) PROHIBITION.—On or after January 1, 1996, no person shall sell, offer for sale, or offer for promotional purposes a mercuric oxide battery for use in the United States unless the battery manufacturer—

(1) identifies a collection site that has all required Federal, State, and local government approvals, to which persons may send used mercuric-oxide batteries for recycling or proper disposal;

(2) informs each of its purchasers of mercuric-oxide batteries of the collection site identified under paragraph (1); and

(3) informs each of its purchasers of mercuric-oxide batteries of a telephone number that the purchaser may call to get information about sending mercuric-oxide batteries for recycling or proper disposal.

(b) APPLICATION OF SECTION.—This section does not apply to a sale or offer of a mercuric oxide button cell battery.

SEC. 207. NEW PRODUCT OR USE.

On petition of a person that proposes a new use for a battery technology described in this title or the use of a battery described in this title in a new product, the Administrator may exempt from this title the new use of the technology or use of battery in the new product on the condition, if appropriate, that there exist reasonable safeguards to ensure that the resulting battery or product without an easily removable battery will not be disposed of in an incinerator, composting facility, or landfill (other than a facility regulated under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6291 et seq.).

THE MERCURY-CONTAINING AND RECHARGEABLE BATTERY MANAGEMENT ACT—BILL SUMMARY (SECTION BY SECTION)

Sec. 1. Short Title

The ''Mercury-Containing and Rechargeable Battery Management Act.''

Sec. 2. Congressional Findings

This section finds that it is in the public interest to phase out the use of mercury in batteries and provide for efficient and cost effective collection and recycling or proper disposal of certain batteries; that uniform national labeling of certain batteries will significantly benefit recycling programs; and that battery recycling programs are to be encouraged.

Sec. 3. Definitions

Provides standard definitions for battery-related terms such as easily removable battery, rechargeable battery, rechargeable consumer product, regulated battery, and remanufactured product.

Sec. 4. Information Dissemination

Requires the Administrator to provide information to the public on proper handling and disposal of used batteries.

Sec. 5. Enforcement

Gives the Administrator the enforcement authority found in RCRA, and provides for fines not to exceed $10,000 for willful violations.

Sec. 6. Information Gathering and Access

Provides recordkeeping requirements for those subject to the Act, and gives the Administrator information gathering authority on battery collection and recycling.

Sec. 7. State Authority

Preserves State authority to enact and enforce standards or requirements more stringent than a standard or requirement established or promulgated under this Act, except as provided in sections 103(e) and 104.

Sec. 8. Authorization

Funds necessary to implement the requirements of this Act are authorized to be appropriated.

TITLE I. RECHARGEABLE BATTERY RECYCLING ACT

Sec. 101. Short Title

This Title may be cited as the ''Rechargeable Battery Recycling Act.''

Sec. 102. Purpose

The purpose of this Title is to facilitate the efficient recycling of used nickel-cadmium rechargeable batteries, used small sealed lead-acid rechargeable batteries, and such rechargeable batteries in used consumer products, through uniform labeling requirements, streamlined regulatory requirements for regulated battery collection programs, and voluntary industry programs by eliminating barriers to funding the collection and recycling or proper disposal of used rechargeable batteries.

Sec. 103. Rechargeable Consumer Products and Labeling

Twelve months after enactment of this Act, batteries and battery packs containing nickel-cadmium or small sealed lead-acid batteries must be easily removable from rechargeable consumer products, and must have specific labeling. The EPA Administrator may promulgate similar regulations for batteries with other electrode chemistries, and shall modify the required labeling to conform with recognized international standards (e.g., labeling standards adopted under NAFTA, GATT, or international standards organizations). These labeling standards would be imposed on batteries nationwide. Upon petition the EPA Administrator can grant a 2-year exemption from the easy removability requirements.

Sec. 104. Requirements

Batteries collected for recycling or proper disposal under the Act will be subject to the same requirements as lead-acid batteries are at present.

Sec. 105. Cooperative Efforts

Two or more persons who participate in projects or programs under this Act may inform the EPA Administrator of their intent to develop jointly or share in the costs of such a program, and may examine and rely upon cost information collected by the program.

TITLE II. MERCURY CONTAINING BATTERY MANAGEMENT ACT

Sec. 201. Short Title

This Title may be cited as the ''Mercury-Containing Battery Management Act.''

Sec. 202. Purpose

The purpose of this Title is to phase out the use of batteries containing mercury.

Sec. 203. Limitations on the Sale of Alkaline-Manganese Batteries Containing Mercury

No person shall sell, offer for sale, or offer for promotional purposes any alkaline-manganese battery manufactured on or after January 1, 1996, with a mercury content that was intentionally introduced (as distinguished from mercury which may be incidentally present in other materials), except that the limitation on mercury content in alkaline-manganese button cells shall be 25 milligrams of mercury per button cell.

Sec. 204. Limitations on the Sale of Zinc Carbon Batteries Containing Mercury

No person shall sell, offer for sale, or offer for promotional purposes any zinc carbon battery manufactured on or after January 1, 1996, that contains any mercury that was intentionally introduced.

Sec. 205. Limitations on the Sale of Button Cell Mercuric-Oxide Batteries

No person shall sell, offer for sale, or offer for promotional purposes in the United States any button cell mercuric-oxide battery on or after January 1, 1996.

Sec. 206. Limitations on the Sale of Other Mercuric-Oxide Batteries

On or after January 1, 1996, no person shall sell, offer for sale, or offer for promotional purposes, non-button cell mercuric-oxide batteries for use in the United States unless the battery manufacturer 1) identifies a collection site that has all required government approvals, to which persons may send used mercuric-oxide batteries for recycling or proper disposal; and, 2) informs each of its purchasers of such batteries of such identified collection site; and 3) informs each of its purchasers of such batteries of a telephone number that the purchaser may call to get information about sending mercuric-oxide batteries for recycling or proper disposal. This section does not apply to mercuric-oxide button cell batteries.

Sec. 207. New Product or Use

Allows persons proposing a new use for battery technology covered by this title or the use of any such battery in a new product to petition the Administrator for an exemption from this title. The Administrator may grant such an exemption, and, if appropriate, require that reasonable safeguards exist to assure that such batteries will not be disposed of in incinerators, composting facilities, or landfills (other than a RCRA-regulated facility).

By Mr. CRAIG (for himself and Mr. DOMENICI):

S. 620. A bill to direct the Secretary of the Interior to convey, upon request, certain property in Federal reclamation projects to beneficiaries of the projects and to set forth a distribution scheme for revenues from reclamation project lands; to the Committee on Energy and Natural Resources.

RECLAMATION FACILITIES TRANSFER ACT

Mr. CRAIG. Mr. President, I am today introducing legislation that would direct the Secretary of the Interior to transfer the Federal interest in certain Bureau of Reclamation projects to the project beneficiaries. This legislation has already been introduced in the other body by Congressman SKEEN.

I am introducing the identical legislative language in order to frame what I believe will be an interesting debate.

The reclamation program was intended to assist in the settlement of the West, and it has been extraordinarily successful in that endeavour. There are many instances, throughout the West, where the objectives of individual projects have been fully accomplished. The project works have been constructed and the allocable repayment obligations have been satisfied. Operation and maintenance of the projects have been turned over to the project beneficiaries and the Federal Government simply holds bare legal title with little or no involvement with the project.

Those seem to me to be classic examples of the type of projects that should be fully turned over to the beneficiaries. The Federal Government incurs annual costs and is exposed to out-year liabilities for no other reason than it holds title to certain works. Given the downsizing of the Bureau of Reclamation, it seems all the more sensible that the Bureau conserve its personnel and resources. Just to have one person available for a project on which the Federal Government does nothing probably costs over $100,000. Given the needs elsewhere within the Department, each of those personnel could be better used.

I do not want anyone to think that this legislation is a final product, but it does serve to frame the debate. Many of our reclamation projects are multiple purpose, and we will need to be careful to ensure that we do not lose sight of those other objectives. Many projects provide important flood control and navigation benefits that are of national interest. That does not argue against a transfer of title, but it is a concern that we should be aware of. A very important consideration, at least to this Senator, will be the issue of the transfer of the water rights associated with the project. Luckily, we do not have to face the issue of Federal reserved water rights since under reclamation law, the Bureau has obtained water rights from the States in conformity with State water law for all its projects. We will, however, need to be careful to make certain that title to those rights is transferred to the appropriate entities or individuals and that the transfer is in conformity with State water law.

There are many other considerations as well, and I do not intend to be exhaustive in this statement but one item deserves mention. We dealt with some of those issues when we considered the transfer of the Solano project several years ago, and our inability to fully resolve all those issues, including the recreational responsibilities of the Bureau at Lake Berryessa, was the reason why we were unable to enact legislation. As drafted, this legislation only applies to fully paid-out projects. In particular instances, I think a case could be made to permit prepayment of the outstanding indebtedness much as we have done for other reclamation loans. That is another issue we will have to closely examine.

I want to congratulate Congressman SKEEN and his cosponsors for raising this issue. All of us in the West, and some from outside the West, have questioned from time to time, the future of the Bureau of Reclamation. Congressman SKEEN has proposed one answer for many projects. I fully expect that we may even find agreement within the Department of the Interior that on some projects there simply is no further role for the Federal Government. I do not expect that we will have a complete transfer of all projects, but that should not stop us from looking at the question. A fully paid out single purpose project located solely within one State will be the easy transfer. I hope we do not limit our vision that narrowly.

By Mr. BENNETT (for himself, Mr. CAMPBELL, Mr. BROWN, Mr. JEFFORDS, Mr. STEVENS and Mr. HATCH):

S. 621. A bill to amend the National Trails System Act to designate the Great Western Trail for potential addition to the National Trails System, and for other purposes.

GREAT WESTERN TRAIL STUDY ACT

Mr. BENNETT. Mr. President, today I am introducing a bill which would direct the U.S. Forest Service, in consultation with the Department of the Interior, to study the Great Western Trail to determine if it should be included in the National Scenic Trails System.

The Great Western Trail takes in some of the greatest outdoor and natural opportunities the West has to offer. The trail will be a continuous, multiple-use route that reaches from Mexico to Canada. It encompasses a series of existing trails, mostly on public lands, running through a corridor which extends through five States. The trail itself extends from the panhandle of Idaho to the southern tip of Arizona. Along the 2,400 mile length of the trail are numerous recreational opportunities for all interests, from cross-country skiers to backpackers, hikers, and off-road enthusiasts. The trail passes through areas rich in western heritage as well as some of the most spectacular scenery in the world.

Prior to designating the Great Western Trail as part of the National Trails System, a study must be conducted to determine its feasibility. This bill take the first step by instructing the Secretary of Agriculture, in consultation with the Secretary of Interior, to conduct a study of the current land ownership and use along the designated trail route. The study would include cost estimates of any necessary land acquisition as well as reporting on the appropriateness of including motorized activity along the trail route. Since the proposed trail route follows roads and trails already in existence, very little right-of-way acquisition would be required and minimal construction would be necessary.

This study will play an important role by determining land and resource capability, public safety needs, and the administrative requirements necessary to designate the trail as part of the National Trails System. It is also important to note that the trail takes advantage of and will rely heavily upon volunteer construction, maintenance, and management of the trail system.

Communities throughout the West will benefit tremendously from the Great Western Trail. The recreational opportunities and rural economic development that travel and tourism will bring to the region will not only provide an economic boost to the local economies, but will help those who travel the Great Western Trail to gain a greater appreciation for our Nation's heritage. The Great Western Trail will provide a positive experience for those who use it. It will become a significant and vital addition to America's system of national trails.

By Mr. LEVIN (for himself and Mr. ABRAHAM):

S. 622. A bill to amend the Clean Air Act to provide that a State containing an ozone nonattainment area that does not significantly contribute to ozone nonattainment in its own area or any other area shall be treated as satisfying certain requirements if the State makes certain submissions, and for other purposes; to the Committee on Environment and Public Works.

CLEAN AIR ACT OZONE TRANSPORT PROVISIONS AMENDMENT ACT

Mr. LEVIN. Mr. President, the bill that Senator ABRAHAM and I are introducing today is intended to help correct a significant flaw in the Clean Air Act. This flaw plagues communities in west Michigan, and affects many other areas of the country that are downwind from significant sources of ozone-causing emissions.

As it is written, the act is unfair. It does not equitably distribute the burden of reducing ozone emissions. Some areas, like west Michigan, could be required to undertake vehicle inspection and maintenance testing programs, although these programs will not be effective in reducing the local concentrations of ozone because their ozone is being transported by wind and weather from other States and parts of the country.

Let me explain the west Michigan situation, the outlook for which has changed significantly in recent weeks. Three west Michigan counties are currently designated as two separate moderate ozone nonattainment areas by the EPA pursuant to the Clean Air Act; Kent and Ottawa Counties are one, and Muskegon County is the other. Because of their classification as moderate ozone nonattainment areas, the State of Michigan was required by law to pass legislation imposing mandatory vehicle inspection and maintenance testing in these two areas starting in

January 1995. This requirement would have made sense were these three counties the cause of either their own nonattainment or the nonattainment of other areas. But they aren't. Governor Engler recognized this inequity and halted the I/M program in late December 1994.

EPA has acknowledged that the three counties ''are essentially overwhelmed by emissions coming from Chicago and northern Indiana.'' In a June 20, 1994, letter to the Michigan department of natural resources, EPA Administrator Carol Browner said, ''. . . the USEPA recognizes that ozone transport may make it very difficult, if not impossible, for Muskegon and Grand Rapids, themselves, to achieve the NAAQS (National Ambient Air Quality Standards) for ozone by deadlines prescribed by the CAA (Clean Air Act).''

In a hearing held on Monday, July 25, 1994, before my Subcommittee on Oversight of Government Management, EPA acknowledged ''that Muskegon County would be in attainment but for ozone transport.'' EPA also confirmed that Muskegon and Grand Rapids ''are not the cause of Chicago and northern Indiana being in nonattainment . . .'' In fact, EPA has not shown that any area is in nonattainment due to west Michigan's emissions. The Lake Michigan ozone study director states, ''. . . that no matter what reductions are made in Michigan, the air quality will not be affected.''

In short, these three counties are not the cause of their own or any other area's ozone problem and no matter what these counties do for themselves, it is unlikely that they will be able to achieve and stay in attainment. Because of ozone blown their way and their resultant classification as moderate nonattainment areas, they could be forced to implement a burdensome vehicle inspection program that would not make a significant difference. As stated succinctly in the Senate Environment Committee's report to accompany S. 1630, the Clean Air Act Amendments of 1989, ''Because ozone is not a local phenomenon but is formed and transported over hundreds of miles and several days, localized control strategies will not be effective in reducing ozone levels.'' Unfortunately, this sentiment did not translate into the act's requirements and implementation. The inflexibility and inequity of the localized mandate undermines public support for the Clean Air Act and environmental laws—in an area of the country that is generally supportive of both.

Fortunately, the last 3 years of ozone monitoring data in the west Michigan area show no violations of the Federal ozone standard for the area, according to an expedited review that I requested of EPA. This means that Michigan can apply for redesignation to attainment, and Administrator Browner has indicated that that process is very ''doable.'' But, once attainment has been achieved, it is possible that only one violation could force west Michigan to return to the I/M requirements. Though EPA has stated that the Agency would seek to avoid this outcome and would carefully examine the violation to determine whether it was caused by local or transported ozone before returning to those requirements, I believe that it would be best to correct the law before such circumstances arise. This bill is a step toward fixing it.

At the hearing mentioned previously, I asked Mary Nichols, Assistant Administrator for Air, if these three counties were treated in the same way rural areas are treated, would they qualify for an exemption from the Clean Air Act requirements. Ms. Nichols replied, ''I believe that is correct.'' She is right. That is at the heart of the unfairness of the Clean Air Act. The legislation we are offering specifically addresses that unfairness. Whether such an area is rural or nonrural should not make any difference, if the area is not a significant cause of its own or any other area's nonattainment. It is the emissions from an area and not the number of people that live in an area that should matter.

This bill applies that principle and eliminates the illogical disparate treatment between rural and nonrural areas. EPA would be required to treat any ozone nonattainment area as a marginal ozone nonattainment area, if the State demonstrates to EPA that sources of ozone-causing emissions in that area do not make a significant contribution to ozone nonattainment measured in the area or in other areas. So, rather than arbitrarily denying the regulatory relief to a metropolitan statistical area, or an adjacent area, which is currently available to a rural transport area, the act's standards would apply equally to rural and nonrural areas. As a result, the burden would be placed more squarely on the shoulders of the ''significant contributors,'' rather than the victims of transport. This is only fair.

Clearly, we may need to refine this legislation further or make the legislative history clear so that the definition of ''significant contribution'' is not subject to excessively narrow interpretation by an EPA Administrator and so that we can ensure protection for the west Michigan area from the unfair burdens associated with transported pollution. But, we also want to make sure that other areas who need to be reducing their emissions because they are transporting pollution elsewhere don't get off the hook. I know that the State of Michigan has the data to prove that west Michigan deserves relief under this bill, but we will work with the State, EPA, and the relevant congressional committees to insure that this legislative effort does not have unintended consequences.

After repeated urgings by myself and others, the EPA has issued a new ozone transport policy. Under the previous policy the west Michigan nonattainment areas would have been required by 1996 to meet clean air standards which they could not meet because of pollution carried by the winds from outside areas such as Chicago, areas with severe air pollution problems. The old policy was particularly unfair, since, under the law, these other more polluted areas do not need to meet the requirements themselves until the year 2007.

The EPA has informed me that the states will be permitted to present an analysis demonstrating the problem and that EPA will consider granting an extension of the 1996 deadline, possibly until 2007. This new policy should avoid further unfairness, as additional requirements could have been placed, in 1996, on the west Michigan area, triggered by pollution which is not generated in the local area.

While I appreciate EPA's efforts in providing this extension, the new policy was, according to Administrator Browner, to have held ''areas responsible only for that portion of the ozone problem which they cause.'' However, this new policy only corrects one inequity in the act, to wit, the fact that downwind areas suffering from significant ozone and other pollution transported from more severely polluted areas have less time to achieve attainment. The change in attainment deadlines does not address the problem of areas inappropriately designated in the first place.

Mr. President, there appear to be a number of other States that contain victim of transport areas in situations similar to west Michigan. I am sure that my colleagues in New England, for instance, have been noticing a significant increase in public attention to the vehicle testing requirements. It will be argued that we should not reopen the Clean Air Act. But, we cannot permit an unfair regulatory burden to fall upon our constituents to correct a problem which they did not cause and which the regulatory requirements cannot cure. We should right that wrong.

Mr. President, I support the goals of the Clean Air Act. But, it needs to be applied with common sense, if it is to retain the support of the American people. Without that support, it cannot succeed.

By Mr. SPECTER (for himself and Mr. HATCH):

S. 623. A bill to reform habeas corpus procedures, and for other purposes; to the Committee on the Judiciary.

THE FEDERAL HABEAS CORPUS REFORM ACT

Mr. SPECTER. Mr. President, the American people want government to do something about violent crime. Unfortunately, the crime bill that passed last year in the 103d Congress did nothing about one of the most serious aspects of the crime problem: the interminable appeals process that has made the death penalty more a hollow threat than an effective deterrent.

The crime bill abandoned key provisions which would have limited appeals in the Federal courts by State death row inmates. These appeals currently average more than 9 years and last as long as 17 years. Of all people sentenced to death since 1976, 266 have been executed, while over 2,900 sit in death row cells. Is it any wonder that in 1963, when the imposition of the death penalty was a real possibility that criminals had to worry about, there were 8,500 homicides in America, a rate of 4.5 homicides per 100,000 people; while in 1993 there were 23,760 homicides, and a more than doubled homicide rate of 9.3 per 100,000. The legal system has turned the death penalty into a toothless saw.

National polls continue to show fear of crime to be the No. 1 concern of most Americans. One survey conducted right after President Clinton's State of the Union Address last year found 71 percent thought more murders should be punishable by the death penalty. My own 12 years of experience in the Philadelphia District Attorney's office, first as an assistant district attorney and chief of the appeals division and later as district attorney, convinces me they are right.

The great writ of habeas corpus has been the procedure used to guarantee defendants in State criminal trials their rights under the U.S. Constitution. It is an indispensable safeguard because of the documented history of State criminal-court abuses such as the Scottsboro case. Unfortunately, it has been applied in a crazy-quilt manner with virtually endless appeals that deny justice to victims and defendants alike, making a mockery of the judicial system.

The best way to stop this mockery is to impose strict time limits on appeals. The bill I am introducing today, along with my distinguished colleague and the Chairman of the Judiciary Committee, Senator HATCH, will do just that.

Criminal justice experts agree that for any penalty to be effective as a deterrent, the penalty must be swift and certain. When years pass between the time a crime is committed and a sentence is carried out, the vital link between crime and punishment is stretched so thin that the deterrent message is lost.

Delays leave inmates, as well as victims, in a difficult state of suspended animation. In a 1989 case, the British Government declined to extradite a defendant to Virginia on murder charges until the local prosecutor promised not to seek the death penalty because the European Court of Human Rights had ruled that confinement in a Virginia prison for 6 to 8 years awaiting execution would violate the European Convention on Human Rights.

Similarly, for survivors of murder victims, there is an inability to reach a sense of resolution about their loved one's death until the criminal case has been resolved. The families do not understand the complexities of the legal process and suffer feelings of isolation, anger, and loss of control over the lengthy court proceedings. The unconscionable delays deny justice to all—society, victims, and defendants.

Since upholding the constitutionality of the death penalty in 1976, the U.S. Supreme Court has required more clearly defined death penalty laws. Thirty-eight States have responded to voters' expressions of public outrage by enacting capital punishment statutes that meet the requirements of the Constitution.

My 12 years experience in the Philadelphia District Attorney's office convinced me that the death penalty deters crime. I saw many cases where professional burglars and robbers refused to carry weapons for fear that a killing would occur and they would be charged with first-degree murder, carrying the death penalty.

One such case involved three hoodlums who planned to rob a Philadelphia pharmacist. Cater, 19, and Rivers, 18, saw that their partner Williams, 20, was carrying a revolver. The two younger men said they would not participate if Williams took the revolver along, so Williams placed the gun in a drawer and slammed it shut.

Right as the three men were leaving the room, Williams sneaked the revolver back into his pocket. In the course of the robbery, Williams shot and killed pharmacist Jacob Viner. The details of the crime emerged from the confessions of the three defendants and corroborating evidence. All three men were sentenced to death because, under the law, Cater and Rivers were equally responsible for Williams's act of murder.

Ultimately, Williams was executed and the death sentences for Cater and Rivers were changed to life imprisonment because of extenuating circumstances, because they did not know their co-conspirator was carrying a weapon. There are many similar cases where robbers and burglars avoid carrying weapons for fear a gun or knife will be used in a murder, subjecting them to the death penalty.

The use of the death penalty has gradually been limited by the courts and legislatures to apply only to the most outrageous cases. In 1925, the Pennsylvania Legislature repealed the mandatory death penalty for first-degree murder, leaving it to the discretion of the jury or trial court. More recently, in 1972, the Supreme Court struck down all State and Federal death penalty laws and prohibited capital punishment for all inmates on death row, or future executions, unless thereafter they contained detailed procedures for considering aggravating and mitigating circumstances.

Prosecutors customarily refrain from asking for the death penalty for all but the most heinous crimes. I did that when I was a district attorney, personally reviewing the cases where capital punishment was requested.

While the changes required by the Supreme Court help insure justice to defendants, there is a sense that capital punishment can be retained only if applied to outrageous cases. I agree with advocates who insist on the greatest degree of care in the use of capital punishment. I have voted for limitations to exclude the death penalty for the mentally impaired and the very young. However, I oppose those who search for every possible excuse to avoid the death penalty because they oppose it on the grounds of conscientious scruples.

While I understand and respect that moral opposition, our system of government says the people of the 38 States that have capital punishment are entitled to have those sentences carried out where they have been constitutionally imposed. In those jurisdictions, the debate is over until the statutes are repealed or the Constitution reinterpreted.

Many Federal habeas corpus appeals degenerate into virtually endless delays, where judges bounce capital cases like tennis balls from one court to another, exacerbated by repetitive petitions. Here is an example, Mr. President: After being convicted in California for a double murder in 1980, Robert Alton Harris filed 10 petitions for habeas corpus review in the State courts, 5 similar petitions in the Federal courts, and 11 applications to the U.S. Supreme Court. Many of those applications to invalidate the death penalty overlapped.

Habeas corpus reform is not a new issue in the Senate. In 1984, the Senate first passed a habeas corpus reform measure, but the House failed to consider it. In 1990, during the 101st Congress, I offered my first legislation to speed up and simplify Federal habeas corpus procedures in capital cases. That year, the Senate adopted the amendment that Senator THURMOND and I wrote to the omnibus anticrime bill that would have reformed habeas corpus procedures in death penalty cases. Unfortunately, at the insistence of the House conferees, our provision was dropped from the conference report.

Habeas corpus reform was revisited in the 102d Congress. Portions of my proposal, S. 19, were incorporated into the Republican habeas corpus reform package, which again became part of the Senate's omnibus anticrime legislation. This time, the conference committee on the Senate and House anticrime bills kept a habeas corpus reform provision in the conference report, but it was the House version. As reported by the conference committee, that version would have exacerbated the delay, not eased it. Despite late efforts at a compromise, habeas reform died with that crime bill.

Again in the 103d Congress, I introduced habeas corpus reform legislation. In 1993, when the new omnibus anticrime bill was being debated in the

Senate, all habeas corpus reform provisions were stripped from the bill. I was dismayed. Even as the Senate was voting to establish a broad Federal death penalty, it was refusing to address the compelling need to expedite review of the death sentences once imposed.

When I demanded that the issue of habeas corpus reform be addressed by the Senate, I was given the opportunity to bring my bill to the floor for debate. Unfortunately, the legislation I introduced to eliminate the delays in carrying out death sentences was tabled by a vote of 65 to 34.

Which brings us to today, Mr. President. My new proposal, the Federal Habeas Corpus Reform Act of 1995, sets strict time limits on the filing of habeas corpus petitions and severely restricts the filing of any successive petition. It requires that the appropriate Federal court of appeals approve the filing of any successive petition. It ensures adequate counsel in habeas corpus proceedings. It imposes time limits on Federal judges to decide habeas corpus petitions in capital cases. And it does this so that imposition of the death penalty in State cases will become more certain and swift, making the death penalty again a meaningful sanction and deterrent.

This bill builds on some innovative strategies that I first proposed in 1990. Already, much of that approach has become widely accepted as the basic building blocks of habeas corpus reform, namely establishing time limits on filing habeas corpus petitions and on Federal court consideration of capital habeas corpus petitions, and requiring that the filing of any successive petition be approved by the appropriate court of appeals under stringent standards.

Under this bill, a single Federal court review will resolve most death penalty cases in under 2 years. First, a Federal habeas corpus petition in a capital case must be filed within 6 months from the final action in State court proceedings. A final decision must be made by the Federal district court within 180 days from the filing of the habeas corpus petition. And a final decision must be made by the Federal court of appeals within 120 days from the filing of the final brief. No successive Federal court habeas corpus petition could be considered unless specific leave was granted by the appropriate court of appeals, and then only for very limited reasons.

In addition, the proposed expedited treatment of habeas corpus petitions in capital cases would apply only to States which agree to provide free, competent legal counsel for defendants during their State court appeals. The bill provides that the Federal government will provide free legal counsel during their Federal habeas corpus proceedings.

The compressed time frame is both just and practical. It would eliminate the lengthy delays and establish habeas corpus proceedings in death penalty cases as the highest priority in the Federal judicial system.

Unless there are unusually complicating factors, which must be detailed in the district court's opinion, I know that such cases can be heard within a few weeks, with no more than a week or two being required to write an opinion. Some district courts have sat on such cases for as long as 12 years. Even in States with the most prisoners on death row, such as Florida, Texas, and California, each district court judge would have such a case only every 1 to 3 years. Judges would not be overburdened.

Decisions on appeal to the court of appeals should be made within 120 days of briefing. That is manageable with priority attention to these relatively few capital cases. The authority of Congress to establish such time limits was exercised in the Speedy Trial Act of 1974, which calls for criminal trials to begin within 70 days unless delayed by specified causes. The key factor in this timetable is the requirement that competent, free counsel be provided to defendants in capital cases during their State and Federal habeas corpus proceedings.

I must stress, however, that the abbreviated timetable does not take effect until State court review of a sentence of death is completed. No time limit is placed by this legislation on the length of trial or on periods for consideration of post-trial motions and the State court appeals. During that period, most, if not all, of the complex factual and legal issues will be organized, analyzed and resolved by the State courts, so that these issues will not be novel when the case goes to Federal court.

Requiring prisoners on death row to file petitions within 6 months of final State court action is not only reasonable, but is necessary to end the abuse in which petitioners and their attorneys now engage. A perfect example of the abuse can be seen in a recent case from my own State of Pennsylvania.

Steven Duffey was convicted of a 1984 murder. His conviction and sentence were unanimously upheld by the Pennsylvania Supreme Court in 1988. From then on, he did nothing until after his death warrant had been signed in September 1994. Then, on the eve of his execution, Duffey's attorneys filed a habeas corpus petition and sought a stay of execution.

The Federal district judge thought himself bound to enter the stay so that the petition could be entertained. But the judge castigated the game-playing of Duffey and his lawyer. In his opinion, Judge Thomas Vanaskie of the Middle District of Pennsylvania hit on a central problem with the current system when he noted that ''[t]here is an overwhelming incentive on the part of a death row inmate to ignore until the eleventh hour collateral challenges to his or her conviction.'' He then quoted the 1994 decision of the U.S. Court of Appeals for the Sixth Circuit in Steffen versus Tate, which had likewise found that ''it is almost always in the interest of a death sentenced prisoner to delay filing a [habeas corpus] petition as long as possible.''

Mr. President, this bill goes a long way toward restoring the death penalty as an effective deterrent. But to get the rest of the way there we need to address the endless delays caused by requiring defendants to exhaust all of their claims in State court before they are allowed to file Federal habeas corpus petitions.

The absurdity of this exhaustion requirement is illustrated by the series of decisions involving a Philadelphia criminal, Michael Peoples. Peoples was convicted in the State trial court in 1981 of setting his victim on fire during a robbery. Following this legal trail is not easy, but it illustrates the farcical procedures. After the Pennsylvania intermediate appellate court affirmed Peoples' conviction in 1983, the Pennsylvania Supreme Court denied review in a decision that was unclear as to whether it was based on the merits or on the Court's procedural discretion that there was no special reason to consider the substantive issues.

Peoples then filed a petition in 1986 for habeas corpus in the U.S. district court. That petition was denied for failure to exhaust State remedies, meaning the State court did not consider all his claims. The case was then appealed to the next higher court level, the Third Circuit Court of Appeals, which reversed the district court on the ground that the exhaustion rule was satisfied when the State Supreme Court had the opportunity to correct alleged violations of the prisoner's constitutional rights. Next, Peoples asked the U.S. Supreme Court to review his case.

Even though the Supreme Court was too busy to hear 4,550 cases in 1988, the Peoples case was one of 147 petitions it granted. After the nine justices reviewed the briefs, heard oral argument and deliberated, Justice Scalia wrote an opinion reversing the Court of Appeals for the Third Circuit.

The Third Circuit then undertook the extensive process of briefs and argument before three judges. It issued a complicated opinion concluding that the original petition for a writ of habeas corpus contained both exhausted and unexhausted claims. That ruling sent the case back to the district court for reconsideration.

Had the Ddstrict court simply considered Peoples' constitutional claims on the substantive merits in the first instance, all those briefs, arguments and opinions would have been avoided. These complications arise from a Federal statute that requires a defendant to exhaust his or her remedies in the State court before coming to the federal court. The original purpose of giving the State a chance to correct any error and to limit the work of the Federal courts was sound. In practice,

however, that rule has created a hopeless maze, illustrated by thousands of cases like those of Peoples and Harris.

The elimination of the statutory exhaustion requirement would mean that Congress, which has authority to establish Federal court jurisdiction, would direct U.S. district courts to decide petitions for writs of habeas corpus after direct appeals to the Supreme Court had upheld the death penalty. From my own experience, I have seen State trial court judges sit on such habeas corpus cases for months or years and then dismiss them in the most perfunctory way because the issues had already been decided by the State Supreme Court in its earlier decision.

Obviously, Mr. President, Federal habeas corpus is a complex and arcane subject. Its difficult and restrictive rules simply delay imposition of the death penalty and render it useless as a deterrent. The purposes of tough law enforcement are best served by full and prompt hearings instead of a procedural morass that defeats the substantive benefits of capital punishment.

In 1990, Chief Justice William H. Rehnquist said the current system for handling death penalty habeas corpus cases in the Federal courts ''verges on the chaotic.'' He was charitable. If justice delayed is justice denied, there's little justice left in the Federal judicial treatment of death sentences.

My proposal for habeas corpus reform will bring practical reinstatement of the death penalty, so that meaningless procedures do not remain the enemy of substantive justice.

Mr. President, I ask unanimous consent that the full text of my bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 623

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Habeas Corpus Reform Act of 1995''.

SEC. 2. FILING DEADLINES.

Section 2244 of title 28, United States Code, is amended by adding at the end the following new subsection:

''(d)(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of—

''(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

''(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

''(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and is made retroactively applicable; or

''(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

''(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim shall not be counted toward any period of limitation under this subsection.

SEC. 3. APPEAL.

Section 2253 of title 28, United States Code, is amended to read as follows:

''§ 2253. Appeal

''(a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.

''(b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.

''(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

''(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

''(B) the final order in a proceeding under section 2255.

''(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

''(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).''.

SEC. 4. AMENDMENT OF FEDERAL RULES OF APPELLATE PROCEDURE.

Rule 22 of the Federal Rules of Appellate Procedure is amended to read as follows:

''Rule 22. Habeas corpus and section 2255 proceedings

''(a) APPLICATION FOR THE ORIGINAL WRIT.—An application for a writ of habeas corpus shall be made to the appropriate district court. If application is made to a circuit judge, the application shall be transferred to the appropriate district court. If an application is made to or transferred to the district court and denied, renewal of the application before a circuit judge shall not be permitted. The applicant may, pursuant to section 2253 of title 28, United States Code, appeal to the appropriate court of appeals from the order of the district court denying the writ.

''(b) CERTIFICATE OF APPEALABILITY.—In a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court, an appeal by the applicant for the writ may not proceed unless a district or a circuit judge issues a certificate of appealability pursuant to section 2253(c) of title 28, United States Code. If an appeal is taken by the applicant, the district judge who rendered the judgment shall either issue a certificate of appealability or state the reasons why such a certificate should not issue. The certificate or the statement shall be forwarded to the court of appeals with the notice of appeal and the file of the proceedings in the district court. If the district judge has denied the certificate, the applicant for the writ may then request issuance of the certificate by a circuit judge. If such a request is addressed to the court of appeals, it shall be deemed addressed to the judges thereof and shall be considered by a circuit judge or judges as the court deems appropriate. If no express request for a certificate is filed, the notice of appeal shall be deemed to constitute a request addressed to the judges of the court of appeals. If an appeal is taken by a State or its representative, a certificate of appealability is not required.''.

SEC. 5. SECTION 2254 AMENDMENTS.

Section 2254 of title 28, United States Code, is amended—

(1) by amending subsection (b) to read as follows:

''(b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—

''(A) the applicant has exhausted the remedies available in the courts of the State; or

''(B)(i) there is an absence of available State corrective process; or

''(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

''(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

''(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.'';

(2) by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively;

(3) by inserting after subsection (c) the following new subsection:

''(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

''(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

''(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.'';

(4) by amending subsection (e), as redesignated by paragraph (2), to read as follows:

''(e)(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

''(2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that—

''(A) the claim relies on—

''(i) a new rule of constitutional law, made retroactive by the Supreme Court, that was previously unavailable; or

''(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

''(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.''; and

(5) by adding at the end the following new subsections:

''(h) Notwithstanding any other provision of law, in all proceedings brought under this section, and any subsequent proceedings on review, appointment of counsel for an applicant who is or becomes financially unable to

afford counsel shall be in the discretion of the court, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

''(i) The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.''.

SEC. 6. SECTION 2255 AMENDMENTS.

Section 2255 of title 28, United States Code, is amended—

(1) by striking the second and fifth paragraphs; and

(2) by adding at the end the following new paragraphs:

''A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—

''(1) the date on which the judgment of conviction becomes final;

''(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

''(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and is made retroactively applicable; or

''(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

''In all proceedings brought under this section, and any subsequent proceedings on review, appointment of counsel for a movant who is or becomes financially unable to afford counsel shall be in the discretion of the court, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

''A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain—

''(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

''(2) a new rule of constitutional law, made retroactive by the Supreme Court, that was previously unavailable.''.

SEC. 7. LIMITS ON SECOND OR SUCCESSIVE APPLICATIONS.

(a) CONFORMING AMENDMENT TO SECTION 2244(a).—Section 2244(a) of title 28, United States Code, is amended by striking ''and the petition'' and all that follows through ''by such inquiry.'' and inserting '', except as provided in section 2255.''.

(b) LIMITS ON SECOND OR SUCCESSIVE APPLICATIONS.—Section 2244(b) of title 28, United States Code, is amended to read as follows:

''(b)(1) A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.

''(2) A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless—

''(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive by the Supreme Court, that was previously unavailable; or

''(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

''(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

''(3)(A) Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

''(B) A motion in the court of appeals for an order authorizing the district court to consider a second or successive application shall be determined by a three-judge panel of the court of appeals.

''(C) The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection.

''(D) The court of appeals shall grant or deny the authorization to file a second or successive application not later than 30 days after the filing of the motion.

''(E) The grant or denial of an authorization by a court of appeals to file a second or success application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.

''(4) A district court shall dismiss any claim presented in a second or successive application that the court of appeals has authorized to be filed unless the applicant shows that the claim satisfies the requirements of this section.''.

SEC. 8. DEATH PENALTY LITIGATION PROCEDURES.

(a) ADDITION OF CHAPTER TO TITLE 28, UNITED STATES CODE.—Title 28, United States Code, is amended by inserting after chapter 153 the following new chapter:

''CHAPTER 154—SPECIAL HABEAS CORPUS PROCEDURES IN CAPITAL CASES

''§ 2261. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment

''(a) This chapter shall apply to cases arising under section 2254 brought by prisoners in State custody who are subject to a capital sentence. It shall apply only if the provisions of subsections (b) and (c) are satisfied.

''(b) This chapter is applicable if a State establishes by statute, rule of its court of last resort, or by another agency authorized by State law, a mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in State post-conviction proceedings brought by indigent prisoners whose capital convictions and sentences have been upheld on direct appeal to the court of last resort in the State or have otherwise become final for State law purposes. The rule of court or statute must provide standards of competency for the appointment of such counsel.

''(c) Any mechanism for the appointment, compensation, and reimbursement of counsel as provided in subsection (b) must offer counsel to all State prisoners under capital sentence and must provide for the entry of an order by a court of record—

''(1) appointing one or more counsel to represent the prisoner upon a finding that the prisoner is indigent and accepted the offer or is unable competently to decide whether to accept or reject the offer;

''(2) finding, after a hearing if necessary, that the prisoner rejected the offer of counsel and made the decision with an understanding of its legal consequences; or

''(3) denying the appointment of counsel upon a finding that the prisoner is not indigent.

''(d) No counsel appointed pursuant to subsections (b) and (c) to represent a State prisoner under capital sentence shall have previously represented the prisoner at trial or on direct appeal in the case for which the appointment is made unless the prisoner and counsel expressly request continued representation.

''(e) The ineffectiveness or incompetence of counsel during State or Federal post-conviction proceedings in a capital case shall not be a ground for relief in a proceeding arising under section 2254. This limitation shall not preclude the appointment of different counsel, on the court's own motion or at the request of the prisoner, at any phase of State or Federal post-conviction proceedings on the basis of the ineffectiveness or incompetence of counsel in such proceedings.

''§ 2262. Mandatory stay of execution; duration; limits on stays of execution; successive petitions

''(a) Upon the entry in the appropriate State court of record of an order under section 2261(c), a warrant or order setting an execution date for a State prisoner shall be stayed upon application to any court that would have jurisdiction over any proceedings filed under section 2254. The application shall recite that the State has invoked the post-conviction review procedures of this chapter and that the scheduled execution is subject to stay.

''(b) A stay of execution granted pursuant to subsection (a) shall expire if—

''(1) a State prisoner fails to file a habeas corpus application under section 2254 within the time required in section 2263;

''(2) before a court of competent jurisdiction, in the presence of counsel, unless the prisoner has competently and knowingly waived such counsel, and after having been advised of the consequences, a State prisoner under capital sentence waives the right to pursue habeas corpus review under section 2254; or

''(3) a State prisoner files a habeas corpus petition under section 2254 within the time required by section 2263 and fails to make a substantial showing of the denial of a Federal right or is denied relief in the district court or at any subsequent stage of review.

''(c) If one of the conditions in subsection (b) has occurred, no Federal court thereafter shall have the authority to enter a stay of execution in the case, unless the court of appeals approves the filing of a second or successive application under section 2244(b).

''§ 2263. Filing of habeas corpus application; time requirements; tolling rules

''(a) Any application under this chapter for habeas corpus relief under section 2254 must be filed in the appropriate district court not later than 180 days after final State court affirmance of the conviction and sentence on direct review or the expiration of the time for seeking such review.

''(b) The time requirements established by subsection (a) shall be tolled—

''(1) from the date that a petition for certiorari is filed in the Supreme Court until the date of final disposition of the petition if a State prisoner files the petition to secure review by the Supreme Court of the affirmance of a capital sentence on direct review by the court of last resort of the State or other final State court decision on direct review;

''(2) from the date on which the first petition for post-conviction review or other collateral relief is filed until the final State court disposition of such petition; and

''(3) during an additional period not to exceed 30 days, if—

''(A) a motion for an extension of time is filed in the Federal district court that would have jurisdiction over the case upon the filing of a habeas corpus application under section 2254; and

''(B) a showing of good cause is made for the failure to file the habeas corpus application within the time period established by this section.

''§ 2264. Scope of Federal review; district court adjudications

''(a) Whenever a State prisoner under capital sentence files a petition for habeas corpus relief to which this chapter applies, the district court shall only consider a claim or claims that have been raised and decided on the merits in the State courts, unless the failure to raise the claim properly is—

''(1) the result of State action in violation of the Constitution or laws of the United States;

''(2) the result of the Supreme Court recognition of a new Federal right that is made retroactively applicable; or

''(3) based on a factual predicate that could not have been discovered through the exercise of due diligence in time to present the claim for State or Federal post-conviction review.

''(b) Following review subject to subsections (a), (d), and (e) of section 2254, the court shall rule on the claims properly before it.

''§ 2265. Application to State unitary review procedure

''(a) For purposes of this section, a 'unitary review' procedure means a State procedure that authorizes a person under sentence of death to raise, in the course of direct review of the judgment, such claims as could be raised on collateral attack. This chapter shall apply, as provided in this section, in relation to a State unitary review procedure if the State establishes by rule of its court of last resort or by statute a mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in the unitary review proceedings, including expenses relating to the litigation of collateral claims in the proceedings. The rule of court or statute must provide standards of competency for the appointment of such counsel.

''(b) To qualify under this section, a unitary review procedure must include an offer of counsel following trial for the purpose of representation on unitary review, and entry of an order, as provided in section 2261(c), concerning appointment of counsel or waiver or denial of appointment of counsel for that purpose. No counsel appointed to represent the prisoner in the unitary review proceedings shall have previously represented the prisoner at trial in the case for which the appointment is made unless the prisoner and counsel expressly request continued representation.

''(c) Sections 2262, 2263, 2264, and 2266 shall apply in relation to cases involving a sentence of death from any State having a unitary review procedure that qualifies under this section. References to State 'post-conviction review' and 'direct review' in such sections shall be understood as referring to unitary review under the State procedure. The reference in section 2262(a) to 'an order under section 2261(c)' shall be understood as referring to the post-trial order under subsection (b) concerning representation in the unitary review proceedings, but if a transcript of the trial proceedings is unavailable at the time of the filing of such an order in the appropriate State court, then the start of the 180-day limitation period under section 2263 shall be deferred until a transcript is made available to the prisoner or counsel of the prisoner.

''§ 2266. Limitation periods for determining applications and motions

''(a) The adjudication of any application under section 2254 that is subject to this chapter, and the adjudication of any motion under section 2255 by a person under sentence of death, shall be given priority by the district court and by the court of appeals over all noncapital matters.

''(b)(1)(A) A district court shall render a final determination and enter a final judgment on any application for a writ of habeas corpus brought under this chapter in a capital case not later than 180 days after the date on which the application is filed.

''(B) A district court shall afford the parties at least 120 days in which to complete all actions, including the preparation of all pleadings and briefs, and if necessary, a hearing, prior to the submission of the case for decision.

''(C)(i) A district court may delay for not more than one additional 30-day period beyond the period specified in subparagraph (A), the rendering of a determination of an application for a writ of habeas corpus if the court issues a written order making a finding, and stating the reasons for the finding, that the ends of justice that would be served by allowing the delay outweigh the best interests of the public and the applicant in a speedy disposition of the application.

''(ii) The factors, among others, that a court shall consider in determining whether a delay in the disposition of an application is warranted are as follows:

''(I) Whether the failure to allow the delay would be likely to result in a miscarriage of justice.

''(II) Whether the case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate briefing within the time limitations established by subparagraph (A).

''(III) Whether the failure to allow a delay in a case, that, taken as a whole, is not so unusual or so complex as described in subclause (II), but would otherwise deny the applicant reasonable time to obtain counsel, would unreasonably deny the applicant or the government continuity of counsel, or would deny counsel for the applicant or the government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

''(iii) No delay in disposition shall be permissible because of general congestion of the court's calendar.

''(iv) The court shall transmit a copy of any order issued under clause (i) to the Director of the Administrative Office of the United States Courts for inclusion in the report under paragraph (5).

''(2) The time limitations under paragraph (1) shall apply to—

''(A) an initial application for a writ of habeas corpus;

''(B) any second or successive application for a writ of habeas corpus; and

''(C) any redetermination of an application for a writ of habeas corpus following a remand by the court of appeals or the Supreme Court for further proceedings, in which case the limitation period shall run from the date the remand is ordered.

''(3)(A) The time limitations under this section shall not be construed to entitle an applicant to a stay of execution, to which the applicant would otherwise not be entitled, for the purpose of litigating any application or appeal.

''(B) No amendment to an application for a writ of habeas corpus under this chapter shall be permitted after the filing of the answer to the application, except on the grounds specified in section 2244(b).

''(4)(A) The failure of a court to meet or comply with a time limitation under this section shall not be a ground for granting relief from a judgment of conviction or sentence.

''(B) The State may enforce a time limitation under this section by petitioning for a writ of mandamus to the court of appeals. The court of appeals shall act on the petition for a writ or mandamus not later than 30 days after the filing of the petition.

''(5)(A) The Administrative Office of United States Courts shall submit to Congress an annual report on the compliance by the district courts with the time limitations under this section.

''(B) The report described in subparagraph (A) shall include copies of the orders submitted by the district courts under paragraph (1)(B)(iv).

''(c)(1)(A) A court of appeals shall hear and render a final determination of any appeal of an order granting or denying, in whole or in part, an application brought under this chapter in a capital case not later than 120 days after the date on which the reply brief is filed, or if no reply brief is filed, not later than 120 days after the date on which the answering brief is filed.

''(B)(i) A court of appeals shall decide whether to grant a petition for rehearing or other request for rehearing en banc not later than 30 days after the date on which the petition for rehearing is filed unless a responsive pleading is required, in which case the court shall decide whether to grant the petition not later than 30 days after the date on which the responsive pleading is filed.

''(ii) If a petition for rehearing or rehearing en banc is granted, the court of appeals shall hear and render a final determination of the appeal not later than 120 days after the date on which the order granting rehearing or rehearing en banc is entered.

''(2) The time limitations under paragraph (1) shall apply to—

''(A) an initial application for a writ of habeas corpus;

''(B) any second or successive application for a writ of habeas corpus; and

''(C) any redetermination of an application for a writ of habeas corpus or related appeal following a remand by the court of appeals en banc or the Supreme Court for further proceedings, in which case the limitation period shall run from the date the remand is ordered.

''(3) The time limitations under this section shall not be construed to entitle an applicant to a stay of execution, to which the applicant would otherwise not be entitled, for the purpose of litigating any application or appeal.

''(4)(A) The failure of a court to meet or comply with a time limitation under this section shall not be a ground for granting relief from a judgment of conviction or sentence.

''(B) The State may enforce a time limitation under this section by applying for a writ of mandamus to the Supreme Court.

''(5) The Administrative Office of United States Courts shall submit to Congress an annual report on the compliance by the courts of appeals with the time limitations under this section.''.

(b) TECHNICAL AMENDMENT.—The part analysis for part IV of title 28, United States Code, is amended by adding after the item relating to chapter 153 the following new item:

''154. Special habeas corpus procedures in capital cases ..... 2261.''.

SEC. 9. TECHNICAL AMENDMENT.

Section 408(q) of the Controlled Substances Act (21 U.S.C. 848(q)) is amended—

(1) in paragraph (4)(A), by striking ''shall'' and inserting ''may'';

(2) in paragraph (4)(B), by striking ''shall'' and inserting ''may''; and

(3) by amending paragraph (9) to read as follows:

''(9) Upon a finding that investigative, expert, or other services are reasonably necessary for the representation of the defendant, whether in connection with issues relating to guilt or the sentence, the court may authorize the defendant's attorneys to obtain such services on behalf of the defendant and, if so authorized, shall order the payment of fees and expenses therefor under paragraph (10). No ex parte proceeding, communication, or request may be considered pursuant to this section unless a proper showing is made concerning the need for confidentiality. Any such proceeding, communication, or request shall be transcribed and made a part of the record available for appellate review.''.

SEC. 10. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

Mr. HATCH. Mr. President, I thank my friend from Pennsylvania, my distinguished colleague on the Judiciary Committee, for his kind words. Senator SPECTER, a former prosecutor, is one of the most knowledgeable persons on the Judiciary Committee with respect to habeas corpus litigation. He has long been an advocate for habeas reform. Together, we have worked hard to craft a consensus bill that will enact meaningful reform of the Federal habeas corpus process. Today, we are introducing as legislation the product of those labors.

I am pleased to join with Senator SPECTER in introducing legislation to reform Federal habeas corpus procedures. This marks an important step in the process of ensuring that convicted criminals receive the punishment they justly deserve. A criminal justice system incapable of enforcing legally imposed sentences cannot be called just and must be reformed.

The statutory writ of habeas corpus is an important means of guaranteeing that innocent persons will not be illegally imprisoned. Indeed, the Constitution guarantees the writ against suspension. Unfortunately, this bulwark of liberty has been perverted by those who would seek to frustrate the demands of justice.

As of January 1, 1995, there were some 2,976 inmates on death row. Yet, only 38 prisoners were executed last year, and the States have executed only 263 criminals since 1973. In 1989, a committee chaired by then-retired Supreme Court Justice Lewis Powell found, among other things, extraordinary delays in the discharge of sentences and an abuse of the litigation process. The committee reported that Federal habeas corpus made up approximately 40 percent of the total delay from sentence to execution in a random sampling of cases. At that time, the shortest of these proceedings lasted for 2.5 years and the longest nearly 15 years.

The Powell committee concluded that the Federal collateral review process, with the long separation between sentence and effectuation of that sentence, ''hamper[ed] justice without improving the quality of adjudication.'' [Powell Committee Report at 4.] This abuse of habeas corpus litigation, particularly in those cases involving lawfully imposed death sentences, has taken a dreadful toll on victims' families, seriously eroded the public's confidence in our criminal justice system, and drained State criminal justice resources. This was not the system envisioned by the Framers of our Constitution.

In my home State of Utah, for example, convicted murderer William Andrews delayed the imposition of a constitutionally imposed death sentence for over 18 years. The State had to put up millions of dollars in precious criminal justice resources to litigate his meritless claims. His guilt was never in question. He was not an innocent person seeking freedom from an illegal punishment. Rather, he simply wanted to frustrate the imposition of punishment his heinous crimes warranted.

Senator SPECTER and I have worked to draft a consensus habeas corpus reform measure that will respect the traditional roles of State and Federal courts, secure the legitimate constitutional rights of the defendant, and restore balance to the criminal justice system.

Habeas corpus reform must not discourage legitimate petitions that are clearly meritorious and deserve close scrutiny. Meaningful reform must, however, stop repeated assaults upon fair and valid State convictions through spurious petitions filed in Federal court.

As a consequence, the reform proposal Senator SPECTER and I have introduced sets time limits to eliminate unnecessary delay and to discourage those who would use the system to prevent the imposition of a just sentence. Manufactured delays breed contempt for the law and have a profound effect on the victims of violent crime.

Our proposed legislation limits second or successive Federal petitions to claims of factual innocence or in those instances in which the Supreme Court has created a new rule of constitutional law and applied that rule retroactively. Our bill also ensures that proper deference is given to the judgments of State courts, who have the primary obligation of trying criminal cases. After all, finality is a hallmark of a just system, and must be maintained in order to preserve the legitimacy of the criminal process.

Critics of meaningful habeas reform complain that the reformers are seeking to destroy the Constitution's guarantees of individual liberty. This specious argument is simply incorrect. It misstates the original understanding of the habeas process. The legislation Senator SPECTER and I have introduced will uphold the constitutional guarantees of freedom from illegal punishment, while at the same time ensuring that lawfully convicted criminals will not be able to twist the criminal justice system to their own advantage.

I believe that the bill we have introduced today will give the American people the crime control legislation they demand and deserve. I urge the support of my colleagues for this important legislation.

By Mr. HATFIELD:

S. 624. A bill to establish a Science and Mathematics Early Start Grant Program, and for other purposes; to the Committee on Labor and Human Resources.

SCIENCE AND MATH EARLY START GRANT PROGRAM ACT

Mr. HATFIELD. Mr. President, I regard the eight National Education Goals we codified in the Goals 2000 legislation as very important challenges; challenges we must make every effort to meet in order to ensure the future of the Nation. All of these goals are interconnected. We cannot afford to lag behind in any and expect to attain the rest. At this time, it appears that U.S. students continue to lag dangerously behind in mathematics and science achievement.

With the passage of Goals 2000 and the ESEA reauthorization, we hope to reduce that gap. Yet, there are still glaring holes in our math and science educational programs. The bill I am introducing today is designed to fill one of those holes. It is that, unfortunately, many currently funded Federal programs for children, especially preschool youngsters, such as Head Start do not usually include any special emphasis on math or science education. Even when math and science are included as part of the curriculum, they are often the weakest areas of emphasis.

Ask any parent to list the character traits of preschoolers and high on the list will be curiosity and a desire to learn ''why.'' These children are naturally curious and eager to understand the world around them. I believe that we, as a nation of educators, are missing a tremendous opportunity when we

fail to build on this natural curiosity by failing to provide these rich experiences.

Federal programs intended to provide additional support for low income children such as Head Start and chapter I should include activities rich in early math and science investigations. It is the very nature of science to answer the question ''why.'' Early exposure to age-appropriate, inquiry-based science and mathematics experiences will provide the foundation on which later understanding rests.

Why, with rare exception, are educational programs rich in math and science missing from preschool curriculum? I believe that the major reason is that most preschool teachers have little experience with simple science and mathematics activities, feel uncomfortable with teaching science and mathematics, and are not prepared to teach age-appropriate and inquiry-based science and mathematics. This is an area of greatest need. While I do not underestimate the importance of language development and social experiences that are a large part of preschool programs, I feel that we can no longer minimize the importance of early science and math investigations. This is particularly true of the target group of Head Start as preschoolers from low-income families often have very limited opportunities to be exposed to science activities.

It is possible to provide these experiences to preschoolers? The answer is provided by a program conducted at Marylhurst College in Portland, OR. This wonderful program, now in its third year, is training Head Start teachers to use exciting, age-appropriate math and science activities in their classes. Picture the effect these activities have on disadvantaged and minority youth. In all likelihood, this is the first chance these children have to relate math and science to their lives. The teacher training program has been conducted for the past three years, and the results have been phenomenal.

Consider what two teachers, Sherry Wright and Debi Coffey, from the Albina Head Start program in Oregon had to say. ''After two years of using the knowledge we gained from the Marylhurst College instructors, we truly feel confident in using science everyday. Our children have learned how to predict and discover the possible results to a problem. Our children will take the science experience that they learned in Head Start with them throughout the rest of their lives.''

Andrey Sylvia, who had no science classes at all prior to the Marylhurst College Head Start Summer Institute, expressed the result excitedly and succinctly. ''Now I am a science whiz!''

My legislation provides for a competitive grant program to establish demonstration sites to acquaint preschool teachers with the stimulating processes involved in the inquiry approach. The teachers themselves must experience the excitement of hands-on activities in order to communicate that excitement to children. No more than 25 percent of the funds can be used for the purchase of supplies necessary to carry out the activities.

A second part of the legislation provides funds to enable Head Start teachers to participate in professional development programs in science and mathematics teaching methods.

We simply cannot afford to miss the opportunity to replicate this concept throughout the preschool and Head Start programs nationwide. These programs are a positive investment in the lives of these disadvantaged children and will create a lifelong interest in math and science. That interest is critical to the future of the children and equally critical to the future of the Nation.

Mr. President, I ask unanimous consent that these letters from the president of Marylhurst College and Sarah Greene, chief executive officer of National Head Start Association, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MARYLHURST COLLEGE,
Marylhurst, OR, March 20, 1995.

Hon. MARK O. HATFIELD,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR HATFIELD: As President of Marylhurst College, an accredited, private, liberal arts college dedicated to making innovative post-secondary education accessible to self-directed students of all ages, I am delighted to offer this letter of support for the Science and Math Early Start Grant Program Act.

Despite national concern and reform efforts, science and mathematics education for preschool children remains limited, and ample studies demonstrate an even greater lack of science and math skills among low income students. A longitudinal study of disadvantaged children at the Perry Preschool in Ypsilanti, Michigan, found that for every dollar invested, seven dollars were returned to society in terms of higher income and fewer costs related to welfare and crime. Widely recognized as a successful intervention, Head Start provides low income children with basic education, but it has been criticized for not providing discipline-based instruction—especially in science—due to the teachers' lack of educational preparation. In fact, the final Report of the Advisory Committee on Head Start Quality and Expansion (12/93) recommends strengthening staff training and building partnerships with the private sector.

Marylhurst designed its Summer Science Institute to address this problem by training Head Start teachers to teach science and encourage their students to develop an interest in science. The pilot Institute—an intensive, experiential, four-week, college credit course covering basic scientific principles—has been offered to 53 Albina Head Start and Portland Public School teachers since 1992. Seventy-five percent reported that the experience completely changed their attitudes about science and their abilities to learn and teach science.

According to an independent evaluation by Northwest Regional Educational Laboratory, the Institute made a major contribution to science teaching in the Albina program. NWREL concluded that it also had ''a positive systemic influence on the level of teacher and student self-esteem, which in turn has increased the effectiveness of student learning across their curriculum.'' The Portland Public School evaluation is currently in process. Marylhurst plans to replicate the successful model through Head Start college partnerships.

Through the Science and Math Early Start Program Act of 1995, Congress can provide seed money to encourage efficient replication of similar programs, which can be maintained without ongoing government support with funding provided by foundations and corporations. This legislation not only ensures that low income children are included in national science and math education reform efforts, but also improves Head Start teacher preparation so that they can better prepare their students for a more technologically and scientifically complex future.

Sincerely,

NANCY WILGENBUSCH,
President.

NATIONAL HEAD START ASSOCIATION,
Alexandria, VA, January 9, 1995.

Hon. MARK O. HATFIELD,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR HATFIELD: The National Head Start Association supports efforts to expand the Summer Science Institute and make it an integral part of the education program for preschoolers. Dr. Nancy Wilgenbush, President, Marylhurst College, presented an overview of the Summer Science Institute to over 5,000 Head Start teachers, administrators, and parents during our annual conference in April 1993. She also conducted a workshop during the conference, it was packed. The presentation resulted in an overwhelming request for more information on project implementation. Our office, as well as Dr. Wilgenbush's, continue receiving such inquiries.

After receiving the absolutely positive results of the project conducted in Portland with Albina Head Start teachers, I am convinced of the need to implement the Summer Science Institute nationwide.

This early infusion of science for young low income children is essential if we are preparing them for the 21st Century.

Thank you for introducing a bill providing funds to implement this project.

Sincerely,

SARAH M. GREENE,
Chief Executive Officer.

ADDITIONAL COSPONSORS

S. 16

At the request of Mr. DOLE, the names of the Senator from Montana [Mr. BAUCUS], the Senator from Utah [Mr. BENNETT], the Senator from Colorado [Mr. BROWN], the Senator from Maine [Mr. COHEN], the Senator from Idaho [Mr. CRAIG], the Senator from New York [Mr. D'AMATO], the Senator from New Mexico [Mr. DOMENICI], the Senator from Iowa [Mr. GRASSLEY], the Senator from Mississippi [Mr. LOTT], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Oklahoma [Mr. NICKLES], the Senator from South Dakota [Mr. PRESSLER], the Senator from Pennsylvania [Mr. SANTORUM], and the Senator from Illinois [Mr. SIMON] were added as cosponsors of S. 16, a bill to establish a commission to review the dispute settlement reports of the World